Remarks

In this paper, no claims are amended, but are merely listed herein. Claims 2-7 and 15 are pending. Reconsideration of the claims, as amended, is requested.

Claims 15 and 2-5 were rejected under 35 U.S.C. 102(b) as unpatentable over Robertson et al. (U.S. Patent No. 5,487,378). Applicant disagrees.

Robertson et al. has been discussed in previous papers, and those comments carry over herein. Applicant continues to contend that Robertson et al. does not disclose a device for inhalation therapy that comprises a membrane which is used not only for generating the aerosol but which is also used for simultaneously generating an audible signal.

The device of the present invention (particularly independent claim 15 paraphrased) requires:

an oscillatable membrane for nebulising a liquid,

an oscillation generating device,

a control means, so that the oscillation generating device oscillates the membrane, and

wherein the control means supplies a further control signal to the oscillation generating device, such that the oscillation generating device oscillates the membrane in an audible frequency range so as to emit an audible signal.

The same control means and the same membrane simultaneously oscillate to generate the aerosol and to generate an audible signal.

Robertson et al. fails to disclose explicitly that generation of the audible signal takes place at the same time as the generation of the aerosol. The Office Action refers to column 14, lines 9 to 34 of Robertson et al. for the supposed teaching of simultaneous audible signal generation.

But even in this passage, there is no disclosure of the generation of an audible signal simultaneously with the generation of the aerosol. Regarding the audible signal, the following discussion is found in the cited passage.

> If however, the `completed dose` signal is not received before the cycle timer (176) times out then the control logic (162) generates an alarm signal indicating a failed dose delivery. This alarm signal activates an audio or visual alarm (160). One such possible audible alarm is to drive the vibrator element (54) with an audio frequency.

First, it is noted that there is no disclosure or suggestion in this passage or anywhere in Robertson et al. that the driving of the vibrator element with an audio frequency to generate an audible alarm occurs while the vibrator element is also driven to generate an aerosol. In fact, the 'timing out' of cycle timer (176) suggests to the expert reader that an error condition exists so that the generation of the aerosol should be interrupted.

Further, the above text from Robertson et al. clearly shows that the "vibrator element 54" is driven with an audio frequency so that the vibrator element generates the audible alarm. Throughout the prosecution of this application, the Patent Office's stance has been that the nozzle (50) of Robertson et al. is a membrane and that the vibrator element (54) is an oscillation generating device. Thus, replacing "nozzle 50" for "membrane" and "vibrator element 54" for "oscillation generating device" at the end of pending claim 15, one arrives at:

> ...said control means supplies a further control signal to the vibrator element 54 during the first oscillation control signal, such that said vibrator element 54 oscillates the nozzle 50 in an audible frequency range so as to emit an audible signal for a user.

This is not what Robertson et al. teaches. Robertson et al. teaches that the vibrator element 54 is driven with an audio frequency so that the vibrator element 54 generates the alarm, in contrast to the (bastardized) pending claim 15 which recites that the vibrator element 54 oscillates the nozzle 50 which emits the alarm.

Applicant further notes throughout the prosecution, Applicant has contended that nozzle 50 of Robertson et al. is not a membrane. The membrane of the present device is the element in the therapy device for generating the aerosol. The present device also imposes a second task onto the membrane, i.e., generating an audible signal, which is very unusual and not known in the field. An expert familiar with inhalation therapy

devices having an oscillatable membrane for nebulising a liquid would not consider the membrane to be used for anything else but generating the aerosol. Robertson et al. reinforces this knowledge, since it is not the membrane (nozzle 50) of their device that generates the audible signal but it is the vibrator element 54 that is driven to generate the audible alarm.

At least for these reasons, Applicant contends that Robertson et al. does not anticipate the pending claims, nor does Robertson et al. make obvious the pending claims. Withdrawal of the rejection is requested.

## SUMMARY

In consideration of the above amendments and remarks, Applicant respectfully requests a Notice of Allowance. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Respectfully submitted,

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